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FROM F.O. Minute
(Mr Evans)

No.

Dated 12 Jul 48

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Legal aspects of the trial of the 5 captured British subjects by the "State of Israel" when that State has not been accorded recognition by His Majesty's Government.

Last Paper

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References

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I understand that the five British subjects were kidnapped by Jewish terrorists from a building under the protection of the U. N. Truce Commission in a part of Jerusalem occupied by the Jews. They are probably charged with espionage.

The first point is that, as we have accorded no recognition to Israel, we cannot recognise any tribunal established by the Government of Israel or its forces as having any authority to try a British subject.

If the men had been captured as a result of a Jewish raid into Arab territory I think we could have claimed that this was an exercise of belligerent rights in contravention of the truce. But, if my understanding of the facts is correct, the capture took place in territory occupied by the Jews. Had the men been arrested by the Israeli authorities not in a building under U N protection and if we had recognised Israel and accorded her belligerent rights I think the arrest, assuming it to have been made on reasonable suspicion that the men had committed espionage, would have been legitimate. ① The capture was in our view illegitimate because it was carried out by terrorists having no legal authority ② and the detention of the men by the Israeli authorities is illegitimate because we have given those authorities no official recognition and have not accorded belligerent rights to them.

Article 105 of the U.N. Charter provides that "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes." Article II Section 3 of the General Convention on the Privileges and Immunities of the U.N. approved by the General Assembly ~~U.N.~~ for accession by all Members provides that "The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action." Although Israel is not a Member of U.N.O. and therefore has no legal obligation to grant these immunities to the Organization, it might justly be claimed that having accepted the Truce Commission she is under a strong moral obligation to ensure that the Organization and its representatives are accorded those privileges and immunities in Israeli territory to which ~~it~~ they would be entitled in the territories of Member States. The capture of the men is therefore an act which the Israeli authorities should condemn and for which they can only ~~make~~ properly make amends by surrendering the men.

I see no reason why the Corporation should not brief a lawyer to defend their employees. This would in no way prejudice HMG's relationship with the Israeli Government. The defence presumably will start with a plea that the Court has no jurisdiction.

W.G. Evans
12/7

Tel. sent to New York.

HJB. 16/7

(= No 3055 of 16/7 – see also No 3083 of 18/7 at E 9479/1260/51)

D.B. 21/7